

Urban Studies

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MEMORANDUM

From: Joseph Heathcott
To: Eastern District, U.S. Circuit Court
Re: Expert opinion in case of Cohen et al v. G & M Realty, LP
Da: 11 July 2015

The purpose of this memorandum is to establish the basis for evaluating the works produced by artists on the walls of the 5 Pointz Institute for Higher Burnin', hereafter referred to as 5 Pointz (now demolished), and then to evaluate the nature and quality of the works collectively. These evaluations are made from a decade of direct observations of the work on site as well as from photographs of the pieces. While the opinion references criteria under Visual Artists Rights Act (VARA), 17 U.S.C. §106A, *et seq.*, the author made no testimony in the passage of said law, and furthermore has no personal or material interest in the case at hand, the works described, or the artists represented.

The opinion rendered in this memorandum is based on my expertise as an Associate Professor of Urban Studies at The New School in New York City, where I teach in two divisions: the School of Public Engagement and Parsons School of Design. I received my Ph.D. in American Studies from Indiana University in 2001, and have since built a career as both a scholar and a photographer. My areas of specialization include: urban visual culture, architectural history and theory, and metropolitan politics, planning, and policy. I do not have any personal or professional ties to any of the 5 Pointz artists.

Summary

The murals executed at 5 Pointz were of the highest technical and aesthetic quality with respect to urban, street-based art. Grounded in the tradition of elaborate graffiti tableaux that emerged in New York City in the 1970s, the murals represent the ultimate accomplishments of the form. This is no accident: access to the walls of 5 Pointz was curated by Jonathan Cohen, aka Meres One, a world-renowned graffiti artist and proponent of the form. Over the years, Meres One invited the very best urban street-based artists to contribute works, and in the process established the world's premier collection. The demolition of the 5 Pointz building resulted in the loss of this iconic collection, depriving the artists of revenue, depriving New York City of a major cultural institution, and depriving the world of the foremost example of urban street-based art.

Significance of 5 Pointz

The 5 Pointz Institute for Higher Burnin' represented a major accomplishment in the history of urban, street-based art, and more than any other place in the world embodied the highest achievement of the form. Its history flowed from the grass roots, avant-garde practice of graffiti, a creative expression globally identified with New York City.

Graffiti emerged as a creative response by young men and women to feelings of boredom, insignificance, and alienation from a hostile social, political, and economic system. In the early 1970s, graffiti "writers" (as graffiti artists call themselves) primarily used spray paint and magic markers to leave their "tags" (elaborate signatures) on walls, subway windows, benches, and other surfaces of the city. By the late 1970s and early 1980s, however, graffiti writers had become more daring, developing the distinctive "Wild Style"—large, "burners" (murals) spanning entire train cars, composed of elaborate bubble letters, three-dimensional effects, cartoons, and other embedded graphics.

The Wild Style energized creative cultures around the country and the world. Burners quickly appeared in Rome, Berlin, Amsterdam, Paris, Lisbon, Mexico City, Buenos Aires, and Johannesburg. The exuberant fonts, playful characters, and shocking color palette of the murals formed the backdrop of--and indeed influenced--a wide range of creative industrial endeavors throughout the 1980s, from fashion and product design to graphic novels, animation, film, advertising and brand management. Detractors, however, regarded graffiti as exemplary of a diminished respect for public spaces. Beginning in 1980, Mayor Ed Koch launched a "war on graffiti," establishing harsher penalties and installing razor-wire fencing and surveillance equipment around train yards. By the end of the 1980s, the era of the great subway murals was over.

Still, graffiti writers continued their work, shifting to more dangerous surfaces such as rooftop walls, parapets, highway ramps, and subway tunnels. It was in this context that the experiment now known as 5 Pointz began. In 1993, Pat DiLillo and Michael "Iz the Wiz" Martin worked out an arrangement with building owner Jerry Wolkoff to use the exterior walls as a showcase for aerosol art. Together DiLillo and Wiz established the Phun Phactory as an alternative to the approach taken by Mayors Koch and Giuliani, which was to criminalize and eradicate graffiti. The Phun Phactory provided an outlet for aspiring graffiti writers to hone their skills and experiment with new techniques. In 2001, DiLillo bowed out of the scene, leaving the curatorial duties to Jonathon Cohen, aka Meres One. Cohen established the 5 Pointz Institute for Higher Burnin' to showcase the top global talent in urban, street-based art.

The 5 Pointz complex comprised one of New York City's greatest and most visible works of public art. As an ensemble, the 5 Pointz murals embodied New York's preeminent role in the world of grass roots cultural innovation. Over the years, the vast overlay of aerosol murals covering the building, and its proximity to MoMA / PS1, made this patch of New York City a globally important center of contemporary art.

Evaluating the Work

Urban, street-based art is as important as any major art movement to contemporary American and world culture. The study of urban, street based art is taken seriously by scholars in fields such as Art History, Urban Studies, Mass Media / Communications, and Visual Culture. Many books have been devoted to the subject, and the movement appears in major surveys of artistic cultures since World War II.

Like many avant-garde art forms since the 1960s, urban, street-based art tends to defy the ordinary logics of artistic valorization, which for the past two centuries revolved around salons, galleries, collectors, auction houses, and museums. For example, avant-garde forms such as performance art and site-specific installation are ephemeral, temporary, and often dematerialized. Rather than deriving aesthetic value through the production of a fixed object, they tend to construct aesthetic worth through the process of making the art itself, or in the relations between the artist and the public. In this way, such avant-garde forms are difficult to objectify, monetize, and collect.

In the case of 5 Pointz, the visual artists created works that clearly defied absorption into the gallery and collector system. However, because the individual pieces were fixed in place as part of an iconic, site-specific ensemble of works, the artists established the basis for the production of value as part of a visual field. Each piece on its own would be difficult to "collect" and sell, without removing the part of the building itself on which the work existed. But because the pieces existed as a layer of artwork applied to the surface of a building containing multiple such pieces, they could derive value from their site-specific condition through use-licensure agreements (in commercial videos, advertisements, and photographs that feature the building and its works, for example).

As in any genre, the works produced by urban, street-based artists range from excellent to good, fair, mediocre, and bad. Criteria for evaluating such work emerges from the history of the genre itself, as well as from the materials and conditions of artistic production. These conditions range from the behavior of aerosolized paint to the density of imagery, references to popular culture, deployment of moral or political rhetoric, and the creation of visual effects (three-dimensionality, color layering, shadowing, lighting and reflection, articulation and elaboration of fonts). Artists working in the genre tend to have specialized knowledge of the absorptive and adherent qualities of different surfaces, the varying particulate sizes and spray radii of aerosol paint cans, the color palettes provided by different manufacturers, and even the technical tolerances of nozzles (often saving the best nozzles and switching them between cans).

In evaluating a work, one can ask several key questions. For example, does the artist understand the genre well enough to work within it, play with its conventions, or even transcend it? How assured is the artist's technique--drawing skill, use of color, creation of visual effects, and "can control" (equivalent of the brush stroke in traditional painting). Does the work account for, or incorporate aspects of, the surface condition, such as the roughness of stone or the presence of apertures and junctures in a wall. How sophisticated, provocative, or playful are the references--and to what extent are they woven or integrated into the work? What is the visual density of the piece, and how do the various elements contribute to the whole? These are by no means the only questions one can ask about a work of aerosol art, but they comprise a common point of departure for evaluation.

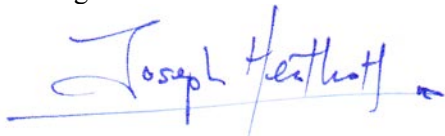
With these varied considerations in mind, it is clear that Jonathan Cohen curated a superlative exposition of murals, reflecting the very best work in urban, street-based art. The works indicated in the suit show a wide range of techniques, motifs, references, and styles, but each one is excellent as a stand-alone work. As an ensemble of site-specific works, they are irreplaceable.

Ramifications of the Loss of 5 Pointz

The demolition of the 5 Pointz has resulted in a great loss to the individual artists, to the City of New York, and to the art world more generally. For the artists, the loss is most immediately palpable, as they have been deprived of a revenue stream. As long as their murals existed, they could realize monetary returns from the use of their works in commercial videos, advertisements, photographic prints, and other derivative products.

On a grander scale, the demolition of 5 Pointz and the murals thereon constitutes an incalculable loss to the art world. While there are many good collections of graffiti, aerosol murals, and urban, street-based art, the 5 Pointz Institute for Higher Burning enjoyed the reputation as the indisputable pinnacle of the form. This is not only evident in the intrinsic quality of the work itself, but by the fact that it had become a major destination for tourists, art lovers, and graffiti enthusiasts from around the world. Not only did New Yorkers lose a series of individual works of art, but also an ensemble collection par excellence, one that embodied the very best aspects of the grass roots creative energy that has made the city what it is.

This signature attests that the above statement was made by me,

A handwritten signature in blue ink that reads "Joseph Heathcott". The signature is written in a cursive, fluid style with a horizontal line underneath the name.

Joseph Heathcott
Associate Professor of Urban Studies
The New School, New York